Dissenting Report

The Committee's recommendation is that the Maritime Law Association of the United States urge the United States to "sign and ratify" the Rotterdam Rules. This language would encourage the Secretary of State to forward the treaty instrument to the President for referral to the Senate alone for advice and consent prior to presidential ratification in accordance with Section 2 of Article Two of the Constitution. I submit that this is not correct in view of the precedents governing the carriage of goods by sea; The Rotterdam Rules should first be sent to the appropriate officers of both Houses of Congress for legislative enactment as a domestic statute.

The existing Carriage of Goods by Sea Act merely governs the shipment of goods while they are onboard the vessel, but the Rotterdam Rules will govern movement of the goods from the seller's warehouse to the buyer's warehouse, clearly impacting the domestic economy as well as international trade.

The Congress of the United States enacted the existing Carriage of Goods by Sea Act in April 1936 before the United States ratified the international treaty, subject to understandings, on Dec 29, 1937. It is thus apparent that the subject matter of the Rotterdam Rules, like the Carriage of Goods by Sea Act, involves a non-self executing international agreement. Chief Justice Roberts explained the distinctions involving treaty execution last year in Medellin v. Texas, 128 S. Ct. 1346, 1356 (2008)

> This Court has long recognized the distinction between treaties that automatically have effect as domestic law and those that while they constitute international law commitments – do not by themselves function as binding federal law. The distinction was well explained by Chief Justice Marshall's Opinion in Foster v. Neilson – overruled

> on other grounds, United States Perchman – which held that a treaty is "equivalent to an act of the legislature," and hence self-executing, when it "operates of itself without the aid of any legislative provision" – When, in contrast, "[treaty] stipulations are not self- executing they can only be enforced pursuant to legislation to carry them into effect"—In sum, while treaties "may comprise international commitments… They are not domestic law unless Congress has either enacted implementing statutes or the treaty itself conveys an intention that it be "self-executing" and is ratified on these terms" Iguarte – De la Rosa v. United States—

The Rotterdam Rules have been prepared without the benefit of a diplomatic conference devoted to its provisions, but the treaty should not enter into force for the United States until both Houses of Congress and the President of the United States have the opportunity to consider the potential effect of this treaty on the United States international trade and the domestic economy.

Furthermore, the North American Free Trade Agreement (NAFTA) and membership in the World Trade Organization (WTO) are other examples whereby the President of the United States approved full Congressional consideration of international agreements dealing with international trade rather than submission to the Senate alone. In fact these1994 statutory enactments occurred a century after Congress first dealt with international ocean carriage of goods in the 1893 Harter Act, never repealed. The entire Congress has, therefore, seen fit to oversee the legal network covering the largest proportion of United States overseas trade, despite the self-executing treaties governing limited aspects of that trade in the conventions on contracts for the international sale of goods (CISG 1980) and the international carriage by air (The 1999 Montreal Convention replacing the 1929 Warsaw Convention).

Accordingly, the Maritime Law Association of the United States should recommend that the Secretary of State forward the Rotterdam Rules to the appropriate officers of the Congress of the United States for necessary legislative action

Respectfully submitted

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